

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA
3

4 Lemar Gant,
5 Plaintiff

6 v.
7 Brian Williams, et al.,
8 Defendants

Case No.: 2:16-cv-00011-JAD-VCF

**Order Dismissing and
Closing Case**

9 Plaintiff Lemar Gant brought this action against various Nevada Department of
10 Corrections (NDOC) prison officials for violations of his civil rights under 42 U.S.C. § 1983.
11 When I entered summary judgment in May 2018 in favor of all defendants who had been served,
12 I ordered Gant to show cause why his claims against the remaining, unserved defendants Brcic
13 (aka Brck), Johnson, and Chipso shouldn't be dismissed under Federal Rule of Civil Procedure
14 4(m).¹ Gant's deadline to show cause was June 4, 2018, and I made it clear (in bold text) that if
15 he "fail[ed] to respond by this deadline or [did] not demonstrate good cause, his claims against
16 these remaining defendants would be dismissed without further notice, and this case will be
17 closed."² Gant filed nothing.

18 FRCP 4(m) requires service of the summons and complaint to be completed within 90
19 days of the complaint's filing, and "[i]f a defendant is not served within 90 days after the
20 complaint is filed, the court—on motion or on its own after notice to the plaintiff—must dismiss
21 the action without prejudice against that defendant or order that service be made within a
22 specified time."³ Rule 4(c)(1) further makes it clear that "[t]he plaintiff is responsible for having
23 the summons and complaint served within the time allowed under Rule 4(m)."⁴

24
25 ¹ ECF No. 74 at 11.

26 ² *Id.* (emphasis omitted).

27 ³ Fed. R. Civ. Proc. 4(m).

28 ⁴ Fed. R. Civ. Proc. 4(c).

1 District courts have the inherent power to control their dockets and “[i]n the exercise of
2 that power, they may impose sanctions including, where appropriate . . . dismissal” of a case.⁵ A
3 court may dismiss an action based on a party’s failure to prosecute an action, failure to obey a
4 court order, or failure to comply with local rules.⁶ In determining whether to dismiss an action
5 on one of these grounds, the court must consider: (1) the public’s interest in expeditious
6 resolution of litigation; (2) the court’s need to manage its docket; (3) the risk of prejudice to the
7 defendants; (4) the public policy favoring disposition of cases on their merits; and (5) the
8 availability of less drastic alternatives.⁷

9 The first two factors, the public’s interest in expeditiously resolving this litigation and the
10 court’s interest in managing its docket, weigh in favor of dismissal of the plaintiff’s claims. The
11 third factor, risk of prejudice to defendants, also weighs in favor of dismissal because a
12 presumption of injury arises from the occurrence of unreasonable delay in filing a pleading
13 ordered by the court or prosecuting an action.⁸ A court’s warning to a party that its failure to
14 obey the court’s order will result in dismissal satisfies the fifth factor’s “consideration of
15 alternatives” requirement.⁹ And that warning was given here.¹⁰ The fourth factor—the public
16 policy favoring disposition of cases on their merits—is greatly outweighed by the factors
17 favoring dismissal.

19 ⁵ *Thompson v. Hous. Auth. of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986).

20 ⁶ See *Ghazali v. Moran*, 46 F.3d 52, 53–54 (9th Cir. 1995) (dismissal for noncompliance with
21 local rule); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260–61 (9th Cir. 1992) (dismissal for failure to
22 comply with an order requiring amendment of complaint); *Carey v. King*, 856 F.2d 1439, 1440–
23 41 (9th Cir. 1988) (dismissal for failure to comply with local rule requiring *pro se* plaintiffs to
keep court apprised of address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir.
1987) (dismissal for failure to comply with court order); *Henderson v. Duncan*, 779 F.2d 1421,
1424 (9th Cir. 1986) (dismissal for lack of prosecution and failure to comply with local rules).

24 ⁷ *Thompson*, 782 F.2d at 831; *Henderson*, 779 F.2d at 1423–24; *Malone*, 833 F.2d at 130;
25 *Ferdik*, 963 F.2d at 1260–61; *Ghazali*, 46 F.3d at 53.

26 ⁸ See *Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976).

27 ⁹ *Ferdik*, 963 F.2d at 1262; *Malone*, 833 F.2d at 132–33; *Henderson*, 779 F.2d at 1424.

28 ¹⁰ ECF No. 74 at 11.

1 Because Gant has not demonstrated that process has been served on these defendants
2 within the time prescribed by FRCP 4(m), **IT IS THEREFORE ORDERED that his claims**
3 **against remaining defendants Brcic (aka Brck), Johnson, and Chipo are DISMISSED**
4 **without prejudice** under FRCP 4(m), and the Clerk of Court is directed to **CLOSE THIS**
5 **CASE.**

6 Dated: February 6, 2019

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9 U.S. District Judge Jennifer A. Dorsey
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